

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

AVKO EDUCATIONAL RESEARCH
FOUNDATION, a Michigan
Corporation, and DONALD J.
MCCABE, author,

Plaintiffs,

v.

THOMAS A. MORROW, an individual,
WAVE 3 LEARNING, INC.;
HOME SCHOOL HOLDINGS, INC.,
and HOME SCHOOL, INC;

Defendants.

Case No.: 1:11-cv-13381-TLL-CEB
Honorable Thomas L. Ludington
Magistrate Charles E. Binder

SUSAN PAYNE WOODROW (P29844)
SUSAN PAYNE WOODROW JD, PC
Attorney for Plaintiffs
3631 Dorothy Lane
Waterford, MI 4329
(248) 760-1818
suzywoodrow@hotmail.com

MARK G. CLARK (P41652)
JOHN DI GIACOMO (P73056)
TRAVERSE LEGAL, PLC
Attorneys for Defendant
Thomas A. Morrow and
Wave 3 Learning, Inc.
810 Cottageview Drive, Unit G-20
Traverse City, MI 49684
(231) 932-0411
mark@traverselegal.com
john@traverselegal.com

**DEFENDANT'S OBJECTION TO PLAINTIFF'S 1-25-12 PROPOSED
ORDER DENYING DEFENDANT'S MOTION FOR DEFAULT
JUDGMENT AS TO PLAINTIFF'S**
(Pursuant to LR 58.1)

NOW COMES Defendants Wave 3 Learning (W3L) and Thomas Morrow,
by and through their counsel, and hereby object to Plaintiff's proposed *Order*
Denying Defendant's Motion for Default and state as follows:

Defendant's Morrow/ Wave 3 timely filed an Answer to the Complaint on August 26, 2011, which asserted affirmative defenses and the counter-claims of Fraud in the Inducement, Breach of Contract /Implied Warranty of Title, Unjust Enrichment, Defamation, Defamation Per Se, and Tortious Interference with a Business Relationship or Expectancy. A response to these counter claims was due on September 16, 2011.

AVKO/McCabe failed to request an extension of time to file a response prior to the due date of September 16, 2011. On September 17, 2011 AVKO/McCabe requested an extension of the time to answer, stating that Attorney Woodward was in the hospital and unable to provide a response. However, on September 21, 2011, Morrow/Wave 3 received evidence that Ms. Woodrow was drafting letters to Morrow/ Wave 3 clients interfering with his actual and prospective business relationships, all while Ms. Woodrow was supposed to be in the hospital and unable to respond to the counter-claims. Therefore, on September 21, 2011, Thomas Morrow/ Wave 3 Learning submitted a Request for Default with the Clerk. Subsequently, on September 22, 2011, AVKO/McCabe filed a late response, **five days late to the counter claims**. The Court denied Defendants'/Counter-Plaintiffs' Request for Entry of Default on September 27, 2011.

Morrow/Wave 3 filed a Motion for *Reconsideration of the Denial of the Request for a Default*, which they later withdrew when the parties agreed to Morrow/Wave 3's filing of a *Stipulation to File a First Amended Answer to*

Plaintiff's Complaint and First Amended Counter Claim, which was filed with this court on October 26, 2011.

Once again, without requesting an extension of time to respond to the amended answer and counterclaims, **AVKO/McCabe filed an answer to Morrow/ Wave 3's amended answer and counter claims thirty seven days after being served.**

Although this Motion for Default was discussed at the hearing on January 23, 2012, this Court did not deny the motion and, as such, Plaintiff's proposed order does not reflect a decision of the Court. Since this is Defendants' second request for default in this case, and because Defendant's intend to preserve this issue for appeal in light of the language of Rule 55 compelling the clerk to enter a default, Defendants decline Plaintiff's request to stipulate to Plaintiff's proposed Order. Defendants respectfully request that the Court issue an order concerning Defendants' Motion for Default.

THEREFORE, Defendants W3L / Morrow, object to Plaintiff's proposed order.

Respectfully submitted,

DATED: January 26, 2012.

/John Di Giacomo/
TRAVERSE LEGAL, PLC
John Di Giacomo (P73056)
810 Cottageview Drive
Unit G-20
Traverse City, MI 49684

CERTIFICATE OF SERVICE

Documents:

- Defendant's Objection to Plaintiff's proposed Order Denying Defendant's Motion for Default

I hereby certify that on January 26, 2012 the referenced documents were electronically filed with the court and served via the courts' ECF system upon:

SUSAN PAYNE WOODROW
Attorney for Plaintiff
suzywoodrow@hotmail.com

and served via U.S mail upon;

Home School Holdings, Inc.
1153 So. Lee Street, Suite 198
Des Plaines, IL 60016

Home School, Inc.
1153 So. Lee Street, Suite 198
Des Plaines, IL 60016

Dated: January 26, 2012

/John Di Giacomo/
TRAVERSE LEGAL, PLC
John Di Giacomo (P73056)
810 Cottageview Drive
Unit G-20
Traverse City, MI 49684